

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMAR A. WHITE,	§
	§
Defendant Below-	§ No. 12, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0210011281
Plaintiff Below-	§
Appellee.	§

Submitted: February 4, 2010

Decided: April 12, 2010

Before **HOLLAND, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 12<sup>th</sup> day of April 2010, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Jamar White, filed this appeal from the Superior Court's denial of his motion for modification of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of White's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that White pled guilty in June 2003 to two counts of first degree robbery, two firearm offenses, and second degree conspiracy. The Superior Court sentenced White in August 2003 to a three-

year mandatory prison term for *each* of his robbery and weapon convictions, as well as a two-year suspended sentence on the conspiracy conviction. White did not appeal. Thereafter, he filed several unsuccessful motions for postconviction relief and for modification of sentence. In October 2009, he filed a motion for correction of sentence. In response, the Superior Court issued a corrected sentencing order, which reduced the mandatory time to be served on each of White's robbery convictions from three years to two years.<sup>1</sup> Thereafter, White filed another motion for modification of sentence, which the Superior Court denied on December 17, 2009. This appeal followed.

(3) White raises one issue in his opening brief on appeal. He argues that the Superior Court erred in denying his motion for sentence modification as being untimely. According to White, the 90-day limitation period for filing a sentence modification motion was restarted when the Superior Court issued its corrected sentencing order in October 2009.

(4) White's brief fails to acknowledge, however, that the Superior Court gave other reasons besides untimeliness for denying his sentence

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<sup>1</sup> In 2002, when White committed his crimes, the statute for first degree robbery did not provide for an enhanced penalty for a first offense. *See* 11 Del. C. § 832 (2001). As a class B felony, the sentencing range was 2 to 20 years. *See* 11 Del. C. § 4205(b)(2) (2001). In June 2003, the first degree robbery statute was amended to provide for an enhanced 3-year penalty for a first offense. When the Superior Court sentenced White in August 2003, it incorrectly sentenced White under the amended statute rather than the statute in effect at the time he committed his crimes.

modification motion. The Superior Court also denied White's motion on the independent and alternative grounds that his motion was repetitive, his sentence is substantively appropriate, and the mandatory portion of his sentence was already corrected.

(5) We have carefully considered the parties' respective positions on appeal. We conclude that the judgment below should be affirmed for the reasons set forth in the Superior Court's December 16, 2009 order. Contrary to White's contention, the Superior Court's corrected sentencing order was not a "new" sentence that restarted the 90-day limitations period under Superior Court Criminal Rule 35.<sup>2</sup> Therefore, his motion for sentence modification clearly was untimely. Moreover, White's motion was repetitive and his corrected sentence fell within statutory guidelines, and thus, was appropriate.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>2</sup> See *Bryant v. State*, 1993 WL 22040 (Del. Jan. 8, 1993) (holding that an amended sentencing order that simply conforms a sentence to state law is not a new sentence requiring due process because the sentencing court has no discretion).